

DONNY RAY WELCH	§	
v.	§	CIVIL ACTION NO. 6:09cv276
JOHN DOE, ET AL.	§	

The Plaintiff Donny Welch, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The case was dismissed on October 13, 2009, because it was filed outside of the applicable limitations period. On March 18, 2010, some six months later, Welch filed a motion for relief from judgment. After review of this motion, the Magistrate Judge issued a Report recommending that the motion for reconsideration be denied. Welch filed objections on September 21, 2010.

In his objections, Welch insists that he was awarded Social Security disability benefits by a federal judge in Ohio, based on a diagnosis of schizo-affective disorder. He says that he has been receiving treatment for this illness since 1992, and is still being treated to this day. Welch says that any stress will exacerbate his condition, as shown by his assaults upon other inmates and his attempts at self-mutilation and suicide. As a result, Welch says that the conditions of his confinement and the sedative properties of his medication make it impossible for him to remain lucid for long periods of time.

As the Magistrate Judge said, Texas law provides that an “unsound mind” tolls the statute of limitations, but the claimant must produce specific evidence that would enable the court to conclude that the plaintiff did not have the mental capacity to pursue litigation for a definite period of time. In this case, Welch has not presented specific evidence showing that he could not pursue litigation for a definite period of time; rather, he has offered only conclusory allegations which do not show that he could not pursue litigation for a definite period of time. In fact, Welch’s pleadings indicate that his alleged disability is ongoing to this day, but he has not shown that he is thereby unable to conduct litigation; on the contrary, court records show that Welch has filed no fewer than 15 lawsuits in the past two years. Welch has offered nothing to show that the statute of limitations should be tolled in his case, and his objections to the Magistrate Judge’s Report recommending denial of his motion for relief from judgment are without merit.

The Court has conducted a careful *de novo* review of the pleadings and records in this cause, including the Report of the Magistrate Judge and the Plaintiff’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and that the Report of the Magistrate Judge (docket no. 32) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff’s motion for relief from judgment (docket no. 30) is hereby DENIED.

**So ORDERED and SIGNED this 27th day of September, 2010.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE**